

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

PHILIP K. DAVIS,

Plaintiff,

v.

Case No. 10-cv-518-JPG

ETHEX CORPORATION and K-V  
PHARMACEUTICAL COMPANY,

Defendants.

**MEMORANDUM AND  
ORDER TO SHOW CAUSE**

This matter comes before the Court after plaintiff Philip K. Davis amended his complaint to add defendant K-V Pharmaceutical Company. This case was originally filed in state court, but defendant Ethex Corporation removed it to federal court under 28 U.S.C. § 1441(a) based on the Court's original diversity jurisdiction under 28 U.S.C. § 1332(a). Davis and Ethex Corporation are citizens of different states, and more than \$75,000, exclusive of interest and costs, is at issue. However, there is no indication complete diversity still exists after the addition of K-V Pharmaceutical Company as a defendant. In a case removed under 28 U.S.C. § 1441(a) that relies on original diversity jurisdiction under 28 U.S.C. § 1332(a), the Court must remand the case pursuant to 28 U.S.C. § 1447(e) when a plaintiff is permitted to amend his pleading to join a nonresident defendant. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 759 (7th Cir. 2009). Joinder of the nonresident defendant destroys the complete diversity required by 28 U.S.C. § 1332(a) and divests the Court of subject matter jurisdiction. *Id.* Because Ethex Corporation, the proponent of federal removal jurisdiction, bears the burden of establishing that jurisdiction, *Schur*, 577 F.3d at 758, the Court ORDERS Ethex Corporation to SHOW CAUSE on or before November 5, 2010, why the Court should not remand this case to state court for lack

of subject matter jurisdiction. The Court will construe a failure to respond in a timely manner as an admission that federal jurisdiction does not exist and will remand this matter.

**IT IS SO ORDERED.**  
**DATED: October 20, 2010**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**